

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States of America,
Government

v.

Criminal No. 05-cr-207-SM

Dominick Bailey,
Defendant

O R D E R

After raising a number of issues¹ with counsel during a hearing on defendant's motion for a new competency evaluation and, alternatively, defense counsel's motion to withdraw, the court determined that an additional evaluation to determine defendant's present competency to stand trial ought to be conducted. The motion to redetermine competence is therefore granted. The motions to withdraw are denied.

¹ The Magistrate Judge ordered an evaluation of defendant's competency, which he was likely authorized to do so under the general and broad provisions of LR 72.1. See e.g. United States v. Auberg, 2001 WL 987802 (S.D. Ind. July 9, 2001). The Magistrate Judge also presided over a subsequent competency hearing and ruled on the merits, finding defendant competent to stand trial, which he likely was not authorized to do absent a referral, and, defendant should have been afforded an opportunity to have the court conduct a de novo review of that determination. See e.g. United States v. Rivera-Guerrero, 377 F.3d 1064 (9th Cir. 2004).

The court hereby orders that a psychiatric examination (as the issues may involve medications prescribed and their necessity/effect relative to competency) of Defendant Dominick Bailey be conducted, and a report be filed with the court, pursuant to the provisions of 18 U.S.C. §§ 4247(b), (c). Dr. Albert Drukteinis, M.D., is appointed to conduct the evaluation. Dr. Drukteinis shall be provided with a copy of the latest evaluation report by Judith Campbell, Ph.D., dated January 11, 2006, and access to any other material he may deem pertinent.

Upon receipt of the report, a competency hearing will be scheduled.

SO ORDERED.



Steven J. McAuliffe
Chief Judge

April 4, 2006

cc: Debra M. Walsh, Esq.
Robert Bloomenthal, Esq.
Sandra F. Bloomenthal, Esq.